

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2569 OF 2007

Shri Taraknath Banku Baital ..Petitioner

Vs.

Shri Jagdishprasad Giriraj
Prasad Agarwal and anr. ..Respondents

Mr.A.V. Chhatre for petitioner.

CORAM: B.H. MARLAPALLE, J.

Date : June 22, 2007.

P.C.:

1. Heard the learned counsel for the petitioner who is the defendant in RAE and R Suit No. 27/47 of 1999. In fact, the present petition is filed by Mrs.Ashwini Taraknath Baital who claims to be wife of the original defendant Shri Taraknath Baital and also his Constituted Attorney. The plaintiff has filed the said suit for eviction of the defendant-tenant Shri Taraknath Baital.

2. Interim Notice No. 135 of 2007 was taken out by the Constituted Attorney praying for issue summons

of witness to Shri Paresh Baital, claimed to be the brother of Shri Taraknath Baital. The applicant claimed that she had not heard anything about her husband during the last several years and she was not aware of his whereabouts. She claimed that the brother of Shri Taraknath Baital was aware of the whereabouts and he should be called before the court as a witness to depose about the whereabouts of Shri Taraknath Baital. The application was claimed to have been filed under Order XVIII Rule 3A of C.P.C. for interposing and for issuing witness summons to Shri Paresh Baital to give evidence and/or furnish the whereabouts of the defendant. The trial court rejected the application by the impugned order dated 5/3/2007 pointing out that the plaintiff had claimed that the Constituted Attorney and the applicant was not the legally wedded wife of Shri Taraknath Baital and she was in unauthorised occupation of the suit premises. No sufficient reasons were advanced in support of her claim to examine Shri Paresh Baital and in any case she being the Constituted Attorney and wife, she would be in the know of the whereabouts of her husband. Rule 3A of Order XVIII of C.P.C. states

that where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the court, for reasons to be recorded, permits him to appear as his own witness at a later stage. The application moved by the present petitioner seeking direction to call Shri Paresh Baital as a witness to disclose the whereabouts of the defendant did not fall within the purview of Rule 3A of Order XVIII of C.P.C. The trial court rightly rejected the said application and, therefore, no interference is called for in the same in a petition under Article 227 of the Constitution.

3. The petition is rejected summarily.

(B.H. Marlapalle, J.)